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May 18, 2016
Via Email: mterrie@house.mi.gov

Mary Lou Terrien
Committee Clerk
House Office Building
P.O. Box 30014
Lansing, MI 48909

Re: Objections to House Bill 5282 (HB 5282)

Dear Committee Clerk Terrien:

I am submitting this letter in response to the currently proposed HB 5282. My office represents thousands of homeowners complaining of damages arising from a sewage backup. I served as the sole homeowner representative in negotiations for the passage of the current law that regulates sewage backup claims, (Public Act 222), which was signed by Governor John Engler on January 1, 2002 and am intimately familiar with the legal issues involved with a sewage backup. As explained in more detail below, we believe that the current law is appropriate and that HB 5282 is unnecessary. We have the following objections:

1. **HB 5282 provides for absolute immunity if the sewer system was designed and constructed according to Michigan Department of Environmental Quality (MDEQ).**

Although the language of the Act states that immunity will apply if the sewer system was constructed according to applicable state standards, such standards and/or permits are set by the MDEQ. In setting such standards, the MDEQ does not seek to prevent basement backups. MDEQ permits and administrative orders and standards are issued to protect the navigable waterways such as the Great Lakes from a discharge of untreated sewage during wet weather events. For this reason, the MDEQ requires that a sewer system be able to store and/or pre-treat all discharges into a

navigable waterway for up to a 25-year rain event.[1] Such standards are imposed for the protection of the Great Lakes. There are known health concerns with the release of untreated sewage into navigable waterways. Clearly, such standards should be more stringent for the discharge of untreated sewage into a private residence. Here, as stated below, HB 5282 provides absolute immunity for rain events which are expected to occur not every 25 years but every 5 years. If anything, the standards pertaining to the release of raw, untreated sewage into private property should be significantly more stringent than such standards that would apply to a discharge of untreated sewage into Lake Huron.

It is also relevant that the MDEQ has governmental immunity for its rule making powers and, thus, plaintiffs seeking damages for a sewage backup would be barred from seeking such damages from both its local municipality and the MDEQ. Clearly such a policy does not promote any type of personal responsibility for the actions of government. Further, it is impossible for me to believe that in light of what has happened with the Flint water crisis that anyone would think that such a broad grant of immunity would be appropriate. In the Flint water crisis, mismanagement by the MDEQ and other government bureaucrats ultimately caused the tax payers hundreds of millions of dollars. It simply makes no sense to shield local units of government from liability based upon the recommendations of an administrative agency that is not even charged with addressing basement backups.

2. Absolute immunity for rain events that are expected to occur every 5 years.

HB 5282 would provide a governmental agency with absolute immunity where the governmental agency demonstrates that there was a rain event of 1.7" or more in any hour or 3.3" within 24-hours of any flooding event. Wet weather events are highly studied and are assigned a probability of return. These probabilities are listed in Technical Paper 40 (TP 40) which is a study of wet weather events prepared by the **United States Department of Commerce Weather Bureau**. Pursuant to TP 40, 1.7" of rain in one hour is a wet weather event that can be expected to occur every 5 – 10 years and a rain event of 3.3" in 24 hours can be expected to occur once every 5 – 10 years (See attachment). Thus, the proposed legislation would provide blanket immunity for rain events that can be expected to occur as often as every 5 years. As such, a governmental entity can flood private property with raw sewage every 5 years and escape liability.

The proposed HB 5282 also completely misunderstands the cause of a sewage backup. Homeowners suffering from a sewage backup are not claiming damages arising from the inundation of private property by rainwater runoff or storm water. Plaintiffs in such cases are claiming damages arising from a sewage backup or the backup of raw sewage from a separated sanitary sewer system onto private property.

[1] For MDEQ standards a 25-year rain event is usually defined as 2" in a 1-hour period or 4 – 4.5" over a 24-hour period.

In Michigan, almost all sewer systems are separated which means that there is a separate storm drain that is intended to capture rainwater runoff. A separate sanitary sewer line is connected to private property that is intended to convey the sewage created by ordinary household uses (flushing toilets, dishwater, shower water). There are no catch basins attached to separated sewer lines. Thus, the amount of a rain event should have no impact upon a properly operated separated sanitary sewer line. When a sewage backup occurs, it is due to improper maintenance, which allows inflow or infiltration (I/I) to enter a separated sanitary sewer line. I/I are well recognized engineering terms that are used to describe rain water that enters into a separated sanitary sewer line. In non-technical terms, I/I refers to holes, cracks, leaks and cross connections into a separated sewer system that should not exist. Often I/I is caused by improper maintenance wherein the local municipality simply ignores the underground infrastructure. Over time, cracks and holes occur which allows rainwater to enter the sanitary sewer line which leads to pressure which is relieved by flooding onto private property.

As I/I is a well known issue, there are numerous regulations governing the amount of I/I that can be present in a sanitary sewer system. Specifically, the Environmental Protection Agency, (EPA), states that I/I should not exceed 120 gallons per capita per day (GPCD). In fact, the EPA has designed the Capacities Management and Operations Manual (CMOM) to provide local units of government with a maintenance program to limit I/I. Similarly, the Ten States Standards state that typically I/I should not exceed 100 GPCD. As there exists governing rules and regulations regarding the appropriate amount of I/I that can be present in a sewer system, a reference to a rainfall event in the proposed legislation is not necessary. Where Plaintiffs are unable to demonstrate that the I/I present in a Defendant's sewer system does not exceed the I/I allowed by the relevant standards, the Plaintiff is unable to prevail.

3. HB 5282 creates excessive government with the requirement of multiple notice.

HB 5282 now requires that an individual aggrieved with a sewage backup not only provide written notice to its local unit of government but somehow within 45 days figure out exactly who runs all of the sewer systems that may be present or contributed to his sewage backup. This is flatly an unreasonable layer of government bureaucracy and is in conflict with the original intention of Public Act 222. As indicated above, I served as the homeowner representative in the negotiations for Public Act 222. In those negotiations we agreed that some form of written notice would be acceptable in that it provided the government with the opportunity to learn about the functioning of its sewer system and protected government from fraudulent claims. One written notice to the local community achieves both of these goals. Under no circumstances should the average homeowner be expected to understand that a local drainage district and/or county interceptor is underneath his street and somehow contributed to his damages. This is particularly true where he is required to provide such notice within 45 days. For these reasons we believe that the requirement that notice be provided to all

governmental entities serves no purpose other than an unnecessary layer of bureaucracy and governmental regulation.

Current Law

The statute as currently written has operated for 14 years to provide compensation for victims of sewage backups without bankrupting or causing significant financial harm to local units of government. Specifically, in the entire State of Michigan in 14 years since the enactment of Public Act 222, less than 20 million dollars in claims have been paid. **There simply is no crisis to address.**[2]

The intent of the Statute was to provide compensation for the property loss occasioned by a sewage backup while simultaneously protecting the public coffers from extreme jury verdicts. For this reason, Plaintiffs, in almost all cases, are not entitled to obtain compensation for pain and suffering or emotional anguish damages. Except in rare cases, Plaintiffs are only entitled to obtain compensation for property loss. The success of the Act is evidenced by the fact that, in the 14 years since the Act's inception, there has been less than 20 million dollars paid in total in the entire State of Michigan for claims arising from sewage backups.

Further evidence of the success of the legislation is the fact that there are numerous municipalities throughout the State of Michigan that previously suffered from chronic sewage backups due to inappropriate maintenance and operation of the local sewer systems. After litigation, many cities where sewage backups previously occurred on a bi-yearly basis fixed their system such that sewage backups ceased. Examples of this would be the City of Birmingham, Beverly Hills, the lower east side of Detroit, Grosse Pointe Park and Jenison. Frankly speaking, the tort system worked in that litigation incentivized the local units of government to properly operate their sewer systems such that the backups ceased.

A further benefit of sewage backup litigation is that in many instances it is actually cheaper to fix the sewage system, albeit with more upfront costs, than it is to continue to transport and treat the additional water and/or sewage created by an improperly run or maintained sewage system. As stated above, most sewage backups occur due to I/I or rainwater that gets into the separated sanitary sewer system that is not intended to carry or capture storm water runoff. Once the storm water runoff enters the sanitary sewer system, it has been mixed with sewage and, thus, must be treated. Over the course of several years, transport and treatment of this excess water can cost a local municipality millions of dollars. Ultimately, it is often cheaper to properly operate the sewer system than it is to continue to pay for the transport and treatment of the rainwater runoff present in the separated sanitary sewer system.

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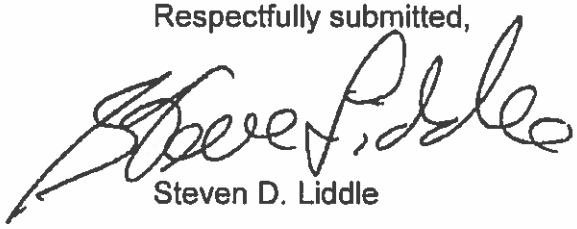
[2] The main proponent of HB 5282, who we believe to be Oakland County, has never paid a single claim arising under P.A. 222.

CONCLUSION

The current Act has operated fairly and there is no evidence of runaway jury verdicts or that it has caused any financial hardships. As such, there is no crisis to address. In contrast, the victim of a sewage backup is often extremely angry and the compensation for lost property helps address that issue. Should HB 5282 be passed, it would be extremely difficult to obtain compensation which would, frankly, cause an already angry resident to be exceedingly unhappy.

Thank you for your consideration in this matter and if you have additional questions or comments, please do not hesitate to contact me.

Respectfully submitted,



Steven D. Liddle

SDL:md

	D < (≤) 1 hr	1 hr ≤ (<) D ≤ 24 hr	D > 24 hr
Michigan	Tech Memo HYDRO-35 (1977)	Technical Paper 40 (1961)	Technical Paper 49 (1964)

pasted from <http://www.nws.noaa.gov/oh/hdsc/currentpf.htm>

Precipitation Frequency Data for Wayne County (TP 40)

Time	1 Year	2 year	5 year	10 year	25 year	50 year	100 year
30 min	0.8	1.0	1.32	1.4	1.6	1.8	1.9
1 hour	1.0	1.3	1.5	1.8	2.1	2.3	2.5
2 hour	1.3	1.5	1.9	2.2	2.5	2.8	3.0
3 hour	1.4	1.7	2.1	2.4	2.8	3.1	3.3
6 Hour	1.7	1.9	2.4	2.8	3.2	3.5	3.8
12 hour	1.9	2.2	2.7	3.2	3.6	4.0	4.3
24 hour	2.1	2.4	3.0	3.5	4.0	4.4	4.7

*Table obtained from Wayne County during the *Lessard* litigation. It appears to have been created by an unknown person's analysis of the TP 40 maps.

GMT Conversion Information

-4 Hour difference between GMT and Daylight Savings Eastern Time Zone

In the United States Daylight Saving Time begins at 2:00 a.m. local time on the second Sunday in March. On the first Sunday in November areas on Daylight Saving Time return to Standard Time at 2:00 a.m. The names in each time zone change along with Daylight Saving Time. Eastern Standard Time (EST) becomes Eastern Daylight Time (EDT), and so forth. A new federal law took effect in March 2007 which extends Daylight Saving Time by four weeks.